

ORIGINAL

<p>1 IN THE UNITED STATES DISTRICT COURT 2 FOR THE NORTHERN DISTRICT OF ILLINOIS 3 EASTERN DIVISION 4 CARMEN FLORES,) 5 individually and on) 6 behalf of all others) No. 07 C 6403 7 similarly situated,) Judge Hibbler 8 Plaintiff,) Magistrate 9 vs.) Judge Valdez 10 DIAMOND BANK,) 11 Defendant.) 12 13 The discovery deposition of CARMEN FLORES, 14 taken in the above-entitled cause, before 15 KIMBERLEY M. TITSWORTH, a notary public of Cook 16 County, Illinois, on Tuesday, June 24, 2008, at 17 2:20 p.m., at 53 West Jackson Boulevard, 18 Suite 315, Chicago, Illinois, pursuant to 19 notice. 20 21 22 Reported by: Kimberley M. Titworth, CSR 23 License No.: 084-004670 24</p> <p style="text-align: right;">1</p>	<p>1 INDEX 2 WITNESS EXAMINATION 3 CARMEN FLORES 4 By Mr. Belongia 6 5 6 7 8 9 10 EXHIBITS 11 NUMBER MARKED FOR ID 12 Flores Deposition Exhibit 13 A 17 14 B 27 15 16 17 18 19 20 21 22 23 24</p> <p style="text-align: right;">3</p>
<p>1 APPEARANCES: 2 CONSUMER ADVOCACY CENTER, P.C. 3 BY: MR. LANCE A. RAPHAEL 4 180 West Washington Street 5 Suite 700 6 Chicago, Illinois 60602 7 (312) 782-5808 8 Representing the Plaintiff; 9 10 BELONGIA & SHAPIRO, LLP 11 BY: MR. MARK D. BELONGIA 12 53 West Jackson Boulevard 13 Suite 315 14 Chicago, Illinois 60604 15 (312) 662-1030 16 Representing the Defendant. 17 18 19 20 21 22 23 24</p> <p style="text-align: right;">2</p>	<p>1 (WHEREUPON, the witness was duly 2 sworn.) 3 MR. BELONGIA: Could you please state and 4 then spell your name for the record. 5 THE WITNESS: Carmen Flores. You want the 6 full name spelled? 7 MR. BELONGIA: Correct. 8 THE WITNESS: C-a-r-m-e-n, F-l-o-r-e-s. 9 MR. BELONGIA: Let the record reflect that 10 this deposition will be taken in accord with all 11 applicable rules and statutes, taken today 12 pursuant to notice and agreement of the parties. 13 Ms. Flores, have you ever given a 14 deposition before? 15 THE WITNESS: No. 16 MR. BELONGIA: I'm sure counsel has met with 17 you and gone over the ground rules for a 18 deposition, but just in case, I'm going to go 19 over some of the general guidelines for a 20 deposition in order to make this process move as 21 smooth as possible; okay? 22 THE WITNESS: Okay. 23 MR. BELONGIA: It's very important that in 24 this room with high ceilings that you speak</p> <p style="text-align: right;">4</p>

<p>1 loudly so everybody can hear you. There's a</p> <p>2 slight echo in the room, so it's important,</p> <p>3 again, that you speak slowly and clearly so that</p> <p>4 the court reporter can take everything down. Is</p> <p>5 that fair?</p> <p>6 THE WITNESS: Yes.</p> <p>7 MR. BELONGIA: If you don't understand any</p> <p>8 one of my questions, which has been known to</p> <p>9 happen from time to time, you can please let me</p> <p>10 know that, in fact, you don't understand the</p> <p>11 question, and I'll be happy to rephrase it;</p> <p>12 okay?</p> <p>13 THE WITNESS: Okay.</p> <p>14 MR. BELONGIA: It's important that you</p> <p>15 respond to all of my questions with verbal</p> <p>16 responses. The court reporter, who's taking</p> <p>17 everything down here on a machine, can't take</p> <p>18 down shrugs, nods, uh-huhs, so everything has to</p> <p>19 be a verbal response. Fair?</p> <p>20 THE WITNESS: Okay. Yes.</p> <p>21 MR. BELONGIA: If at any point you need a</p> <p>22 break for whatever reason, as long as there is</p> <p>23 not a pending question, we will break to use the</p> <p>24 washroom, get you something to drink or for just</p>	<p>1 Chicago.</p> <p>2 Q. How do you spell the street name,</p> <p>3 please.</p> <p>4 A. M-c-V-i-c-k-e-r.</p> <p>5 Q. Is that a capital V?</p> <p>6 A. Capital V.</p> <p>7 Q. And that's in Chicago?</p> <p>8 A. Yes.</p> <p>9 Q. What's the ZIP code?</p> <p>10 A. 60639.</p> <p>11 Q. And what is your current age, please.</p> <p>12 A. God, I'm trying to calculate that. 55.</p> <p>13 Q. And what's the last four digits of your</p> <p>14 Social Security number?</p> <p>15 A. 9516.</p> <p>16 Q. And your marital status?</p> <p>17 A. I'm divorced.</p> <p>18 Q. Do you have any children?</p> <p>19 A. Yes.</p> <p>20 Q. How many?</p> <p>21 A. Two.</p> <p>22 Q. And how old are they?</p> <p>23 A. 31 and 34.</p> <p>24 Q. Do either of them work in the legal</p>
<p>1 a break to have a break; okay?</p> <p>2 THE WITNESS: Okay.</p> <p>3 MR. BELONGIA: Given that I don't know you,</p> <p>4 let me just take a brief second to explain the</p> <p>5 deposition. It's an opportunity for me, as the</p> <p>6 attorney for the defendant bank, Diamond Bank,</p> <p>7 FSB, and the case that you brought against it to</p> <p>8 ask you questions on the record; okay?</p> <p>9 THE WITNESS: Yes.</p> <p>10 MR. BELONGIA: And as I don't know you, I'm</p> <p>11 going to ask some general background questions,</p> <p>12 and I'm sure Mr. Raphael will let you know that</p> <p>13 I'll be doing that. And don't be offended by</p> <p>14 any means by the questions. It's just that I</p> <p>15 don't know you, and this is my only opportunity</p> <p>16 to speak to you on the record; okay?</p> <p>17 THE WITNESS: All right.</p> <p>18 CARMEN FLORES,</p> <p>19 having been first duly sworn, was examined and</p> <p>20 testified as follows:</p> <p>21 EXAMINATION</p> <p>22 BY MR. BELONGIA:</p> <p>23 Q. What is your current home address?</p> <p>24 A. 2707 North McVicker. That's in</p>	<p>1 field?</p> <p>2 A. No.</p> <p>3 Q. They don't work for a law firm or any</p> <p>4 law school?</p> <p>5 A. No.</p> <p>6 Q. What's your highest level of education?</p> <p>7 A. About second year of college.</p> <p>8 Q. Did you receive any type of certificate</p> <p>9 or degree?</p> <p>10 A. No.</p> <p>11 Q. And where did you attend?</p> <p>12 A. I attended -- well, I've attended</p> <p>13 Harold Washington.</p> <p>14 Q. Were you seeking any specific type of</p> <p>15 coursework, business or marketing or anything?</p> <p>16 A. Yes, accounting.</p> <p>17 Q. Accounting?</p> <p>18 A. Yes.</p> <p>19 Q. Are you currently employed?</p> <p>20 A. Yes.</p> <p>21 Q. Where are you employed?</p> <p>22 A. I work for World Book.</p> <p>23 Q. What is World Book?</p> <p>24 A. An encyclopedia company.</p>

1 Q. Where are they located?
 2 A. On Michigan Avenue.
 3 Q. In Chicago?
 4 A. Yes.
 5 Q. How long have you worked there?
 6 A. Let's see. 15 years.
 7 Q. What is your job title there?
 8 A. I am a fulfillment supervisor.
 9 Q. And describe for me generally what is
 10 meant by the title fulfillment manager?
 11 A. I monitor all the warehouses and make
 12 sure that the orders are fulfilled. And I also
 13 take care of the database that handles all the
 14 prices and things like that for order
 15 processing.
 16 Q. Do you work a 40-hour work week?
 17 A. It's 37 and a half.
 18 Q. And is it a standard work week, it's
 19 the same hours each week?
 20 A. Yes.
 21 Q. During the course of the written
 22 discovery phase, I believe it was listed,
 23 identified that you had previously filed a
 24 bankruptcy; is that right?

9

1 A. Correct.
 2 Q. And what year did you file bankruptcy?
 3 A. Oh, bankruptcy?
 4 Q. Yeah.
 5 A. No.
 6 Q. Never filed a bankruptcy?
 7 A. No.
 8 MR. RAPHAEL: Did I say she filed a
 9 bankruptcy?
 10 MR. BELONGIA: No. There was a question
 11 about that. I sent you a letter inquiring as to
 12 whether or not there was a Carmen Flores.
 13 BY MR. BELONGIA:
 14 Q. There was actually two that filed
 15 bankruptcy here in the Northern District, and we
 16 didn't know if that was you or not.
 17 A. No, not me.
 18 MR. RAPHAEL: Good. I thought I had said she
 19 filed a bankruptcy when she didn't.
 20 BY MR. BELONGIA:
 21 Q. Besides this lawsuit, are you a
 22 plaintiff in any other litigation?
 23 A. The Credit Union 1.
 24 Q. So there is another pending lawsuit

10

1 involving you as a plaintiff, is that right?
 2 A. Yes.
 3 Q. And is that the case Smith versus
 4 Credit Union 1?
 5 A. That's correct.
 6 Q. Who is Smith?
 7 A. I don't know.
 8 Q. Are you a plaintiff in that case?
 9 A. Yes.
 10 Q. Do you know how many other plaintiffs,
 11 besides you and Smith, there are in the Credit
 12 Union 1 case?
 13 A. No.
 14 Q. Can you tell me generally what are your
 15 claims in that lawsuit?
 16 A. What do you mean claims? I'm sorry.
 17 Q. That's okay. I know you're not an
 18 attorney. I don't expect you to give me legal
 19 responses.
 20 But you are a plaintiff, and when
 21 you're a plaintiff, you filed a lawsuit against
 22 somebody. And when you filed a lawsuit, you
 23 were making claims. They did something wrong.
 24 A. Right.

11

1 Q. What did Credit Union 1 do wrong?
 2 MR. RAPHAEL: Objection. Calls for work
 3 product, attorney-client privilege information.
 4 And if you go off the record for a second, I'll
 5 explain something to you.
 6 MR. BELONGIA: Off.
 7 (WHEREUPON, a discussion was had
 8 off the record.)
 9 MR. BELONGIA: For the record, we're going to
 10 stipulate between the parties that the Smith
 11 versus Credit Union 1 case involving Ms. Flores
 12 is the same claim as -- similar claims as
 13 brought in the Diamond Bank case.
 14 MR. RAPHAEL: Correct. And it's the subject
 15 of a preliminary approved settlement and class
 16 basis where the first-named plaintiff is Smith,
 17 not Ms. Flores.
 18 BY MR. BELONGIA:
 19 Q. Ms. Flores, besides the Smith case and
 20 this case you're here today about, are there any
 21 other lawsuits that you ever filed?
 22 A. Not that I can recall at this time.
 23 Q. So is it fair to say you never filed
 24 any actions for workers' comp or for personal

12

3 (Pages 9 to 12)

1 injury?
 2 A. No, not that I can recall.
 3 Q. So is it fair to say that you've,
 4 besides the Smith case, never been a class
 5 plaintiff, other than these two cases?
 6 A. Correct.
 7 Q. Do you currently have a bank account?
 8 A. Yes.
 9 Q. How many bank accounts do you have?
 10 A. How many bank accounts?
 11 Q. Yes.
 12 A. Maybe three.
 13 Q. Are they all at the same financial
 14 institution?
 15 A. Yes.
 16 Q. And what institution is that?
 17 A. TCF.
 18 Q. And at the time of the alleged
 19 occurrence in this lawsuit of August 2nd, 2007,
 20 were your accounts at TCF Bank?
 21 A. Yes.
 22 Q. How long have you maintained bank
 23 accounts at TCF Bank?
 24 A. Several years. I don't remember how

13

1 many.
 2 Q. And do you have an ATM card for the
 3 bank accounts at TCF Bank?
 4 A. Yes.
 5 Q. And how many ATM cards do you have?
 6 A. I carry only one with me. So I think I
 7 have three.
 8 Q. So you have three total cards?
 9 A. ATM, yes.
 10 Q. The one that you carry currently, is
 11 that linked to all three accounts?
 12 A. Yes.
 13 Q. And that card, do you have it with you
 14 today?
 15 A. Yes.
 16 MR. RAPHAEL: Are we going to do the same
 17 thing we did?
 18 MR. BELONGIA: Yes.
 19 MR. RAPHAEL: Fine.
 20 In the other depositions of the bank
 21 president and the bank vice president, they
 22 produced to me their ATM cards for their
 23 accounts, their bank accounts, so that we could
 24 write down the number for their bank account on

14

1 a piece of paper that I said I would keep
 2 strictly confidential, only my eyes, no one else
 3 sees it.

4 It's just for the evidence to establish
 5 that -- I guess for you he's going to be using
 6 it for the evidence to establish that you
 7 actually took out money from this ATM. For me
 8 it was to establish that the bank president had
 9 used his own ATM. No one will see it, except
 10 for him; correct?

11 MR. BELONGIA: It'll be maintained and we do
 12 what is called a little stipulation to
 13 confidentiality. And what I'm going to do is
 14 inspect your card, I'm going to write the number
 15 down, he's going to verify that the number is
 16 correct, he's going to sign this piece of paper
 17 and your number will be kept in our office in a
 18 locked drawer so that it can't be revealed to
 19 anyone.

20 And we understand the identity theft
 21 issues, and we did the same thing when we
 22 produced our clients', employees, bank ATM
 23 cards, okay? But we need to, as did
 24 Mr. Raphael, verify that transactions did incur

15

1 so that we can cross-reference with the
 2 discovery produced in the case; okay?
 3 MR. RAPHAEL: So if you have your ATM card,
 4 toss it to him.

5 BY MR. BELONGIA:

6 Q. Do you have any questions?
 7 A. No.

8 MR. RAPHAEL: I stipulate that this is her
 9 ATM stuff. I'd just staple this closed so that
 10 no one else but you or I saw it.

11 MR. BELONGIA: Yeah.

12 MR. RAPHAEL: And we should mark it as a
 13 confidential exhibit.

14 MR. BELONGIA: Exhibit A. For the record,
 15 Ms. Flores's numbers for her ATM account
 16 number --

17 MR. RAPHAEL: I didn't give any in the
 18 others.

19 MR. BELONGIA: Right. I'm not going to.
 20 Has been written on a piece of paper.
 21 Counsel and I have signed the stipulation of
 22 confidentiality. It has been folded up. It
 23 will be maintained in a safe place within our
 24 law firm, not revealed outside of this

16

<p>1 litigation, and destroyed at the conclusion of</p> <p>2 the litigation, so as to ensure the safety of</p> <p>3 the information.</p> <p>4 It will be marked as Confidential</p> <p>5 Exhibit A, and the number not read on the</p> <p>6 record.</p> <p>7 (WHEREUPON, Flores Deposition</p> <p>8 Confidential Exhibit A was</p> <p>9 marked for identification by</p> <p>10 the attorney.)</p> <p>11 MR. RAPHAEL: Off the record for a second.</p> <p>12 (WHEREUPON, a discussion was had</p> <p>13 off the record.)</p> <p>14 BY MR. BELONGIA:</p> <p>15 Q. Was this the ATM card that was used at</p> <p>16 the time of the alleged occurrence on --</p> <p>17 A. Yes.</p> <p>18 Q. -- August 2nd, 2007?</p> <p>19 A. Yes.</p> <p>20 Q. It's important to add one more ground</p> <p>21 rule at this point. It's important for the</p> <p>22 transcript purposes that you wait until I ask</p> <p>23 the entire question. It's human nature; once I</p> <p>24 start talking, you know what I'm going to say,</p> <p style="text-align: right;">17</p>	<p>1 A. It's right on Clark and North Avenue.</p> <p>2 Q. And prior to using the ATM on</p> <p>3 August 2nd, 2007, had you ever used the ATM at</p> <p>4 that bank before?</p> <p>5 A. No.</p> <p>6 Q. This was the first time you ever used</p> <p>7 this bank ATM?</p> <p>8 A. Yes.</p> <p>9 Q. What was the reason you were in the</p> <p>10 vicinity of Clark and North Avenue on</p> <p>11 August 2nd, 2007?</p> <p>12 A. I was by my chiropractor.</p> <p>13 Q. And where is your chiropractor located?</p> <p>14 A. My chiropractor is on Wells by North</p> <p>15 Avenue.</p> <p>16 Q. And what's your chiropractor's name?</p> <p>17 A. Peak Performance.</p> <p>18 MR. RAPHAEL: Peak or Pete?</p> <p>19 THE WITNESS: Peak, P-e-a-k.</p> <p>20 BY MR. BELONGIA:</p> <p>21 Q. And do you have a specific physician</p> <p>22 that you see at Peak Performance?</p> <p>23 A. They changed, so I got a new one now.</p> <p>24 It's not the same. But it's the same office.</p> <p style="text-align: right;">19</p>
<p>1 to answer but we need to get it all on the</p> <p>2 record clean; okay?</p> <p>3 A. Okay.</p> <p>4 Q. What bank branch of TCF Bank do you</p> <p>5 usually use for your financial transactions?</p> <p>6 A. I usually go to the one that's close to</p> <p>7 my house. That's on -- what do you want, the</p> <p>8 address?</p> <p>9 Q. Yes.</p> <p>10 A. I don't have the address. I can tell</p> <p>11 you --</p> <p>12 Q. Give me the nearest intersection.</p> <p>13 A. It's on Narragansett, close to</p> <p>14 Diversey. It's a Jewel's.</p> <p>15 Q. And your employer is located on</p> <p>16 Michigan Avenue, correct?</p> <p>17 A. Correct.</p> <p>18 Q. Whereabouts on Michigan Avenue?</p> <p>19 A. South Water.</p> <p>20 Q. So can we agree that neither one of</p> <p>21 those locations is close to Diamond Bank?</p> <p>22 A. Yes.</p> <p>23 Q. To the best of your recollection, where</p> <p>24 is Diamond Bank located?</p> <p style="text-align: right;">18</p>	<p>1 MR. RAPHAEL: At the time. He's asking you</p> <p>2 at the time.</p> <p>3 BY MR. BELONGIA:</p> <p>4 Q. Yeah, at the time who was your</p> <p>5 chiropractor?</p> <p>6 A. Dr. Crevy.</p> <p>7 Q. How do you spell that?</p> <p>8 A. I think it's C-r-e-v-y.</p> <p>9 Q. And prior to August 2nd, 2007, for how</p> <p>10 long a period of time had you been treating with</p> <p>11 Dr. Crevy at Peak Performance at Wells and North</p> <p>12 Avenue?</p> <p>13 A. About two years.</p> <p>14 Q. And is it your testimony that in that</p> <p>15 two-year period you had never gone to the corner</p> <p>16 of Clark and North Avenue to utilize the ATM</p> <p>17 machine at Diamond Bank or any of its</p> <p>18 predecessors?</p> <p>19 A. No, I have not. Not that I can recall.</p> <p>20 Q. When you would treat with Dr. Crevy,</p> <p>21 did you pay by cash, credit card or check?</p> <p>22 A. I don't remember.</p> <p>23 Q. Was it covered, do you know, by medical</p> <p>24 insurance?</p> <p style="text-align: right;">20</p>

1 A. Part of it is. So sometimes if I have
2 the cash, I'll pay cash. Sometimes credit card.
3 So I don't remember on that day.
4 Q. On August 2nd, 2007, do you recall the
5 specific reason why you needed to use an ATM
6 machine?
7 A. I can't remember.
8 Q. Do you recall specifically how much
9 money that you took out of the ATM machine at
10 Diamond Bank on August 2nd, 2007?
11 A. I don't remember.
12 Q. Do you remember what time of day that
13 you went to the machine to use the machine for
14 whatever purpose?
15 A. I think it was late afternoon.
16 Q. Was it before or after your doctor's
17 appointment?
18 A. I don't remember if it was before or
19 after.
20 Q. Do you recall typically during that
21 two-year period on and prior to August 2nd,
22 2007, whether your appointments with Dr. Crevy
23 were after work?
24 A. They're usually after work.

21

1 Q. And do you have a standing appointment
2 time with Dr. Crevy?
3 A. The majority of the time was around --
4 it's after 4:00, 5:00 o'clock.
5 Q. What's your dismissal time from work?
6 In other words, what time do you leave?
7 A. Well, I work -- it's usually
8 4:00 o'clock, 4:15. But many times I stay over.
9 Q. At the time you used the ATM at Diamond
10 Bank on August 2nd, 2007, was anyone with you?
11 A. No.
12 Q. At the time you used the ATM, were you
13 talking on a cell phone?
14 A. Not that I can remember.
15 Q. Prior to using the Diamond Bank ATM on
16 August 2nd, 2007, had you ever used an ATM
17 machine before?
18 A. Yes.
19 Q. Can you give me an approximate number
20 of times that you used an ATM machine prior to
21 August 2nd, 2007?
22 A. No.
23 MR. RAPHAEL: Objection.
24 Wait, pause.

22

1 Form of the question. You can answer.
2 THE WITNESS: No.
3 BY MR. BELONGIA:
4 Q. Would it be fair to say it was more
5 than 100 times?
6 MR. RAPHAEL: Same objection, form of the
7 question. You can answer.
8 THE WITNESS: I don't know how many times.
9 BY MR. BELONGIA:
10 Q. You testified earlier that you have
11 three ATM cards, is that correct?
12 A. Correct.
13 Q. And had you ever used any of the other
14 two ATM cards, besides the one that you've
15 produced today?
16 A. Very rarely.
17 Q. What is the purpose of having these two
18 other ATM cards?
19 A. I have them joint with my kids.
20 Q. And that's the next question. Who else
21 is on these three bank accounts at TCF Bank,
22 besides yourself?
23 MR. RAPHAEL: Objection. Form. You can
24 answer. Always answer, unless I say don't

23

1 answer. And if you can answer, always answer.
2 BY MR. BELONGIA:
3 Q. The reason I asked is that you just
4 testified that your children were on the
5 accounts. And so now I'm asking --
6 A. They're on the other two accounts. On
7 this one I'm the only one.
8 Q. So let me ask this question. You have
9 three total accounts at TCF Bank, correct?
10 A. Correct.
11 Q. You're on all three accounts, correct?
12 A. Correct.
13 Q. On any one of those three accounts, is
14 there somebody else that's a signatory on those
15 accounts?
16 A. Like I said, my kids. Each one of my
17 kids has one account with me.
18 Q. Again, that's why we ask these
19 questions. And they may seem redundant or
20 repetitive, but we have to get to the minutia of
21 the details. That's what lawyers do.
22 So is it fair to say one of the
23 accounts, the account that you accessed on
24 August 2nd, 2007, you're the sole signatory on

24

1 that account?
2 A. That's correct.
3 Q. You have another account where you have
4 one child as also a signatory, is that right?
5 A. That's correct.
6 Q. And that has its own ATM card, is that
7 right?
8 A. That's correct.
9 Q. And you have a third account with the
10 other child as the other signatory, correct?
11 A. That's correct.
12 Q. And that has, also, another ATM card;
13 correct?
14 A. That's correct.
15 Q. But the only thing we care about today
16 that we're talking about is the account that you
17 have with the ATM card that you produced because
18 you're the only signatory on that account,
19 right?
20 A. That's correct.
21 MR. RAPHAEL: If there's anything you want me
22 to stipulate to, let me know.
23 MR. BELONGIA: Okay.
24 MR. RAPHAEL: Because we'll do it the same

25

1 way we did it at the other depts. We'll try to
2 stipulate.
3 Stipulate means agree to it.
4 THE WITNESS: Okay.
5 BY MR. BELONGIA:
6 Q. And so I'm correct you testified a
7 little bit earlier that you don't recall the
8 specific purpose for why you were accessing or
9 using the ATM at Diamond Bank on August 2nd,
10 correct?
11 A. Correct. I can't remember.
12 Q. And is it fair to say you don't
13 remember how much money -- strike that.
14 Going to the actual transaction at the
15 ATM, do you remember whether you withdrew money
16 or made a deposit?
17 A. At Diamond Bank?
18 Q. Correct.
19 A. It would be to withdraw money.
20 Q. And is it fair to say you did not make
21 a deposit at that time, correct?
22 A. Correct.
23 Q. And am I correct that you do not recall
24 how much money that you took out from the ATM,

26

1 from the Diamond Bank ATM, on August 2nd?
2 A. Correct, I don't remember.
3 MR. RAPHAEL: Objection. Asked and answered
4 twice.
5 MR. BELONGIA: And we'll mark this as
6 Exhibit B.
7 (WHEREUPON, Flores Deposition
8 Exhibit B was marked for
9 identification.)
10 BY MR. BELONGIA:
11 Q. Looking at Exhibit B, do you recognize
12 what is represented to be Exhibit B?
13 MR. RAPHAEL: Can we stipulate that it's the
14 same? It's Flores 1.
15 MR. BELONGIA: Yes.
16 THE WITNESS: I'm sorry?
17 MR. RAPHAEL: Do you recognize that?
18 THE WITNESS: Yes.
19 BY MR. BELONGIA:
20 Q. What is it?
21 A. It's the receipt that I got after I
22 withdrew the money.
23 Q. Does this refresh your recollection as
24 to the amount of money you withdrew from the

27

1 Diamond Bank ATM?
2 A. Yeah, it stated \$50.
3 Q. Now that you can recall that it was
4 \$50, do you remember what you used that \$50 for?
5 A. No.
6 MR. RAPHAEL: Say it louder so she can --
7 you're going to drive her crazy. You're so
8 soft.
9 THE WITNESS: I'm sorry.
10 BY MR. BELONGIA:
11 Q. So it would be fair to say that after
12 you withdrew the money you completed your
13 transactions at the ATM at Diamond Bank?
14 A. Yes.
15 Q. You didn't deposit any of the money
16 back into your account, correct?
17 A. No.
18 MR. RAPHAEL: Do you want me to stipulate
19 there was no deposit made?
20 MR. BELONGIA: Yes.
21 MR. RAPHAEL: We're stipulating no deposit
22 was made by my client into the Diamond Bank
23 account.
24 We withdrew Count 2 of the Complaint, I

28

<p>1 think; right?</p> <p>2 MR. BELONGIA: Yeah.</p> <p>3 MR. RAPHAEL: Was it Count 2 or Count 1?</p> <p>4 MR. BELONGIA: Count 2.</p> <p>5 MR. RAPHAEL: So if you want to reopen it for</p> <p>6 being subject to, you know, admissible to --</p> <p>7 MR. BELONGIA: No.</p> <p>8 MR. RAPHAEL: -- discovery, you can keep</p> <p>9 asking the questions and then I'll start asking</p> <p>10 your client those questions. But I've steered</p> <p>11 away from them.</p> <p>12 BY MR. BELONGIA:</p> <p>13 Q. When you first -- strike that.</p> <p>14 Not having ever used this ATM before at</p> <p>15 Diamond Bank, what made you decide to use the</p> <p>16 ATM at Diamond Bank versus some other location?</p> <p>17 MR. RAPHAEL: Objection. Form and</p> <p>18 foundation. You can answer.</p> <p>19 THE WITNESS: Well, it was the bank I</p> <p>20 remembered seeing when I go to the chiropractor,</p> <p>21 so I stopped there when I needed the cash.</p> <p>22 BY MR. BELONGIA:</p> <p>23 Q. How do you get from -- strike that.</p> <p>24 Did you on August 2nd, 2007, go</p> <p style="text-align: right;">29</p>	<p>1 him or me questions. So even though you're</p> <p>2 saying it in a questioning type of fashion, it's</p> <p>3 coming out as if you are saying this as an</p> <p>4 emphatic statement. So if you don't know</p> <p>5 exactly, tell him. Otherwise --</p> <p>6 BY MR. BELONGIA:</p> <p>7 Q. What other routes do you take, besides</p> <p>8 the route you just described?</p> <p>9 A. I take the Brown Line to Sedgwick, and</p> <p>10 then I walk down.</p> <p>11 Q. Where do you pick up the Brown Line?</p> <p>12 A. On State and Lake.</p> <p>13 Q. Besides the Brown Line and the Clark</p> <p>14 bus, is there any other way you get from your</p> <p>15 work to Dr. Crevy's office?</p> <p>16 A. No.</p> <p>17 Q. Do you know if there are any other</p> <p>18 ATM's within a one-block radius of Dr. Crevy's</p> <p>19 office, besides Diamond Bank?</p> <p>20 MR. RAPHAEL: Objection. Form of the</p> <p>21 question.</p> <p>22 THE WITNESS: No, not that I can remember</p> <p>23 seeing any.</p> <p>24</p> <p style="text-align: right;">31</p>
<p>1 directly from your employer to Dr. Crevy's</p> <p>2 office?</p> <p>3 A. Yes.</p> <p>4 Q. What route did you take from</p> <p>5 Dr. Crevy's -- from work to Dr. Crevy's office?</p> <p>6 A. I have a couple of routes, so I don't</p> <p>7 remember that day which route I took.</p> <p>8 Q. Well, describe for me the routes and</p> <p>9 the alternative routes that you take.</p> <p>10 A. I take the Clark bus down to -- I think</p> <p>11 it's Armitage. And then I walk the half block</p> <p>12 or block there.</p> <p>13 Q. Whereabouts on Wells Street is</p> <p>14 Dr. Crevy's office?</p> <p>15 A. It's right on Wells between North</p> <p>16 Avenue and that other street. Is it Armitage?</p> <p>17 MR. RAPHAEL: You're looking at the wrong guy</p> <p>18 because I actually told him I've never been to</p> <p>19 Diamond Bank.</p> <p>20 You've been there, so you know what</p> <p>21 she's talking about. I don't.</p> <p>22 THE WITNESS: The next big street after North</p> <p>23 Avenue. I think it's Armitage.</p> <p>24 MR. RAPHAEL: And by the way, you can't ask</p> <p style="text-align: right;">30</p>	<p>1 BY MR. BELONGIA:</p> <p>2 Q. On August 2nd, 2007, when you used the</p> <p>3 ATM machine at Diamond Bank, did you look at the</p> <p>4 machine to see whether or not there was a fee</p> <p>5 notice placed on the machine?</p> <p>6 A. Yes.</p> <p>7 Q. Why did you look on the machine --</p> <p>8 A. I always do.</p> <p>9 Q. -- to see whether or not there was a</p> <p>10 fee notice?</p> <p>11 A. I always do.</p> <p>12 Q. Why do you always look?</p> <p>13 A. To see if I'm going to get charged a</p> <p>14 fee.</p> <p>15 Q. Prior to August 2nd, 2007, had you ever</p> <p>16 been charged a fee for using a bank that was not</p> <p>17 a TCF Bank?</p> <p>18 A. I don't remember if it was before or</p> <p>19 after. I don't remember.</p> <p>20 Q. When did you open up your account?</p> <p>21 When I say account, we're just talking about</p> <p>22 this specific one account you identified that</p> <p>23 you're the sole signatory at TCF Bank.</p> <p>24 A. Several years ago. I don't remember</p> <p style="text-align: right;">32</p>

1 how long.
 2 Q. When you opened up that account at TCF
 3 Bank, do you recall getting any type of
 4 disclosures from the bank concerning your
 5 account?
 6 A. I don't remember.
 7 Q. Do you recall getting a disclosure from
 8 TCF Bank that anytime you performed an ATM cash
 9 withdrawal from a non-TCF Bank that you may be
 10 charged a fee by that other bank?
 11 MR. RAPHAEL: Objection. Form and
 12 foundation.
 13 THE WITNESS: I don't remember getting -- if
 14 they did, I don't remember.
 15 BY MR. BELONGIA:
 16 Q. The ATM at Diamond Bank, where was that
 17 located? Was it in the inside or the outside of
 18 the building?
 19 A. It's on the outside of the building.
 20 Q. And you testified that the bank is at
 21 Clark and North Avenue, is that right?
 22 A. No. I'm sorry. I'm wrong on that
 23 one -- yeah, it is Clark and North Avenue.
 24 Q. On what side of the building was the

33

1 ATM, Clark or North Avenue?
 2 A. It's on --
 3 MR. RAPHAEL: You can't use your hands to
 4 gesture.
 5 THE WITNESS: I'm thinking. I'm sorry. It's
 6 on Clark.
 7 BY MR. BELONGIA:
 8 Q. And was it closer to the North Avenue
 9 side of the building, or was it closer to the
 10 other side of the building farthest away from
 11 North Avenue?
 12 A. It's closer to North Avenue.
 13 Q. As you're looking at the building and
 14 standing on Clark, is the ATM on the right --
 15 strike that.
 16 Do you recall where the entrance to the
 17 bank is located?
 18 A. No.
 19 Q. Is it on the North Avenue side or the
 20 Clark side?
 21 A. I don't remember.
 22 MR. RAPHAEL: Objection. Form. Go ahead.
 23 BY MR. BELONGIA:
 24 Q. Do you remember when you went to use

34

1 the ATM whether or not you had to wait for
 2 anyone in front of you to finish a transaction
 3 at the machine?
 4 A. There was no one there.
 5 Q. While you were performing your
 6 transaction at the machine, was anyone waiting
 7 in line behind you for you to finish your
 8 transaction?
 9 A. No.
 10 Q. You testified that you always look at
 11 the machine to see if there's a fee notice
 12 posted on the machine before you do a
 13 transaction, correct?
 14 A. Correct.
 15 Q. If you see a fee notice on a non-TCF
 16 Bank, do you -- strike that.
 17 On and prior to August 2nd, 2007, when
 18 you would look at an ATM machine that was a
 19 non-TCF Bank machine and you did not see a fee
 20 notice, would you continue with the transaction?
 21 MR. RAPHAEL: Objection. Form. You can
 22 answer.
 23 THE WITNESS: If I did not see a fee notice?
 24 Yes.

35

1 BY MR. BELONGIA:
 2 Q. If you saw a fee notice on a non-TCF
 3 Bank, would you continue to consummate the
 4 transaction at the machine?
 5 MR. RAPHAEL: Same objection, form.
 6 THE WITNESS: If I see a fee notice, I try
 7 and go to another bank that doesn't have one.
 8 If it's -- thinking it's free.
 9 BY MR. BELONGIA:
 10 Q. On August 2nd, 2007, when you used the
 11 ATM at Diamond Bank, was it your understanding,
 12 based on your testimony of a moment ago, that
 13 the transaction would be free?
 14 THE WITNESS: Yes.
 15 MR. RAPHAEL: Objection. Form. But go
 16 ahead.
 17 BY MR. BELONGIA:
 18 Q. When you were consummating your
 19 transaction at the ATM machine at Diamond Bank,
 20 do you recall seeing an on-screen notice on that
 21 ATM alerting you to the fact that you were going
 22 to be charged a fee because you were a
 23 non-Diamond Bank customer?
 24 MR. RAPHAEL: Objection to form. Go ahead.

36

1 THE WITNESS: I saw a fee, yes, after I
2 started the transaction.
3 BY MR. BELONGIA:
4 Q. And did you continue with the
5 transaction after seeing the notice that you
6 were going to be charged a fee?
7 A. Yes.
8 Q. Let me ask you, the next question is,
9 why did you continue to consummate the
10 transaction after you were alerted that you were
11 going to be charged a fee?
12 MR. RAPHAEL: Objection to form. Go ahead.
13 THE WITNESS: I was already in the
14 transaction, so I just finished it off and --
15 BY MR. BELONGIA:
16 Q. Would you agree with me that if you
17 would have chosen not to be charged a fee
18 pursuant to the on-screen notice that the
19 transaction would have stopped and you would not
20 have been charged a fee?
21 MR. RAPHAEL: Objection. Foundation. Go
22 ahead.
23 THE WITNESS: I'm sorry, repeat that again.
24

37

1 BY MR. BELONGIA:
2 Q. Do you agree with me that upon seeing
3 this on-screen notice that you were about to be
4 charged a fee that if you chose no, not to
5 continue with the transaction, that you, in
6 fact, would have not been charged for any
7 transaction?
8 MR. RAPHAEL: Same objection.
9 THE WITNESS: Okay. Yes.
10 BY MR. BELONGIA:
11 Q. But you chose to continue with the
12 transaction after seeing the on-screen notice of
13 the fee, correct?
14 A. Yes.
15 MR. RAPHAEL: Off the record.
16 (WHEREUPON, a discussion was had
17 off the record.)
18 BY MR. BELONGIA:
19 Q. After you completed the transaction,
20 you were issued a receipt, is that correct?
21 A. Yes.
22 Q. And after getting the receipt from the
23 ATM, would you agree with me that the ATM
24 identified a charge on that receipt?

38

1 A. Yes.
2 Q. Is it fair to say Exhibit B, which is
3 in front of you, Flores Bates Stamp 1,
4 identifies that you were charged a \$2 fee; is
5 that right?
6 A. Yes.
7 Q. After receiving that receipt, did you
8 ever contact anyone at Diamond Bank to object to
9 the fee being charged for the transaction?
10 MR. RAPHAEL: Objection. Form.
11 THE WITNESS: No.
12 BY MR. BELONGIA:
13 Q. Would it be fair to say you did not
14 contact anyone at Diamond Bank to object to the
15 fee because you had chosen to proceed with the
16 transaction after reading the on-screen notice
17 that you were going to be charged a fee?
18 A. Can you repeat that?
19 MR. BELONGIA: Can you read that back?
20 (WHEREUPON, the record was read
21 by the reporter as requested.)
22 THE WITNESS: Yes.
23 BY MR. BELONGIA:
24 Q. Do you recall on August 2nd, 2007,

39

1 observing any signage on the ATM at Diamond
2 Bank?
3 MR. RAPHAEL: Objection. Form.
4 THE WITNESS: I don't remember seeing
5 anything else.
6 BY MR. BELONGIA:
7 Q. And when you say anything else, what
8 did you see?
9 MR. RAPHAEL: Same objection, form.
10 THE WITNESS: I didn't see any notice on
11 there. And I don't remember seeing anything on
12 the ATM.
13 BY MR. BELONGIA:
14 Q. Is it your testimony that if you had
15 seen a fee notice on the ATM machine you
16 wouldn't -- you would have not used that ATM and
17 chosen an alternative ATM?
18 MR. RAPHAEL: Objection. Form of the
19 question, foundation, calls for speculation.
20 You can answer.
21 THE WITNESS: I probably would have. I don't
22 know.
23 BY MR. BELONGIA:
24 Q. Well, you gave two answers there so

40

10 (Pages 37 to 40)

1 let's explore that a little further.
2 A. Sorry.
3 Q. You said, I probably would have but
4 maybe -- I didn't quite understand the response.
5 This is very simple. If you had seen a
6 fee notice on any ATM on August 2nd, 2007, would
7 you have chosen to use a different ATM instead
8 of the ATM at Diamond Bank? Go.
9 MR. RAPHAEL: Objection. Foundation, form of
10 the question, calls for speculation, incomplete
11 hypothetical. Subject to that, you can answer.
12 THE WITNESS: I'm not sure.
13 BY MR. BELONGIA:
14 Q. Why are you not sure?
15 MR. RAPHAEL: Same objection.
16 THE WITNESS: Like I said before, I would try
17 and find a bank that didn't have the sticker,
18 and I'm not sure if I would have.
19 BY MR. BELONGIA:
20 Q. Have you ever used an ATM at Diamond
21 Bank since August 2nd, 2007?
22 A. No.
23 Q. Have you yourself ever taken
24 photographs of the ATM at Diamond Bank?

41

1 A. No.
2 Q. Do you have any friends or family who
3 are plaintiffs in any pending class action
4 cases?
5 MR. RAPHAEL: Objection. Foundation. Let me
6 think about this for a second because I don't
7 know if it's work product or attorney-client
8 privilege.
9 Can I ask you a question?
10 MR. BELONGIA: Yeah.
11 MR. RAPHAEL: I don't know the answer to the
12 question you just asked her. But I'm concerned
13 that if any of them are and they're not on file
14 and she doesn't know about it and it's not a
15 public record. And it would be attorney-client
16 or work product information --
17 MR. BELONGIA: It's regarding pending class
18 actions. So if it's not filed, then
19 obviously --
20 MR. RAPHAEL: So if you know if anything is
21 on file.
22 For any friends, family or relatives;
23 did you say?
24 MR. BELONGIA: Correct.

42

1 THE WITNESS: I don't know.
2 BY MR. BELONGIA:
3 Q. Prior to the Smith case and the current
4 case against Diamond Bank, have you ever engaged
5 the office of Mr. Raphael before for any legal
6 purpose?
7 A. No.
8 Q. After you left the ATM on August 2nd,
9 2007, where did you go?
10 A. I don't remember.
11 Q. Prior to August 2nd, 2007, had you ever
12 walked up to an ATM machine that did not have a
13 fee notice, perform a transaction and not get
14 charged an ATM fee?
15 MR. RAPHAEL: Objection. Form.
16 THE WITNESS: I don't remember. I don't
17 remember.
18 BY MR. BELONGIA:
19 Q. As you sit here today, do you know of
20 any non-TCF Bank ATM machines that you can use
21 to perform a withdrawal of cash that will not
22 charge you a fee?
23 MR. RAPHAEL: Objection. Form. You can
24 answer.

43

1 THE WITNESS: I think it's WaMu.
2 BY MR. BELONGIA:
3 Q. So it's your understanding that even
4 though you're not a WaMu customer you can use
5 their machines to withdraw money and not pay a
6 fee?
7 A. Right.
8 Q. Do you have any knowledge as to who
9 removed the ATM fee notice from the Diamond Bank
10 ATM?
11 MR. RAPHAEL: Objection. Form of the
12 question, foundation, assumes facts not in
13 evidence.
14 THE WITNESS: No.
15 MR. BELONGIA: It was worth asking. You
16 never know.
17 MR. RAPHAEL: We don't even know that it was
18 removed.
19 BY MR. BELONGIA:
20 Q. Prior to August 2nd, 2007, were you,
21 Carmen Flores, aware of the legal requirement
22 that a bank post an ATM fee notice on an ATM
23 machine?
24 A. Yes.

44

11 (Pages 41 to 44)

1 Q. And how did you know that?
2 A. My daughter told me.
3 Q. When did your daughter tell you?
4 A. I don't remember that.
5 Q. How soon before August 2nd, 2007, did
6 she tell you that?
7 A. I don't remember.
8 Q. Do you know how she knew that?
9 A. Through her friend.
10 MR. RAPHAEL: Objection. Foundation, form.
11 BY MR. BELONGIA:
12 Q. And do you know who her friend is? A
13 name?
14 MR. RAPHAEL: Tell him, if you know. If you
15 don't know, then you don't know. This isn't a
16 memory test. Don't feel bad if you don't know
17 questions or answers that he's asking. If you
18 don't remember, say I don't remember and that's
19 okay.
20 THE WITNESS: I don't know who told her. She
21 said it was a friend.
22 BY MR. BELONGIA:
23 Q. Did you ever talk to that friend, or is
24 it just solely a friend?

45

1 A. She's just a friend. I don't know who
2 told her.
3 Q. Do you know if that friend was a
4 plaintiff in any pending litigation regarding
5 ATM fee notices?
6 A. When she told me it was a friend, she
7 didn't tell me who the friend was at the time.
8 So I don't know who the friend was.
9 Q. Can you tell me about the conversation
10 you had with your daughter about the legal
11 requirement that fee notices be posted on an ATM
12 machine? In other words, how did this
13 conversation first start?
14 A. I don't remember how it started but she
15 just -- I remember her telling me about it. But
16 I don't remember how it started.
17 Q. Was this a conversation she just out of
18 the blue said, hey, by the way, did you know the
19 fabulous fact that ATM's need to have fee
20 notices posted, or was this in response to
21 something you said to her?
22 A. I don't remember. I don't remember how
23 it started. We sometimes talk about things, and
24 it must have come up.

46

1 Q. What did you do after this conversation
2 with your daughter where you learned that,
3 according to your daughter, an ATM has to have a
4 fee set and posted on its face?
5 A. Nothing.
6 Q. Obviously, at some point you did do
7 something, because we're sitting here today with
8 counsel here, who has filed a lawsuit on your
9 behalf and behalf of others regarding the
10 alleged failure of the ATM at Diamond Bank to
11 have a fee sign posted.
12 So would it be fair to say at some
13 point you engaged counsel, is that right?
14 A. Yes.
15 Q. And as a ground rule, we're going to
16 state right now, and your lawyer is going to
17 agree with me, that any of my questions from
18 here forth when I ask you something I'm not
19 asking you anything that you talked about with
20 counsel, anything that you shared with counsel,
21 any documents you gave him.
22 Those are all attorney-client,
23 attorney-work product, and those are all
24 privileged; okay? So I'm not asking about any

47

1 of those things.
2 MR. RAPHAEL: I'm in agreement with him.
3 THE WITNESS: Okay.
4 MR. RAPHAEL: He said I was going to agree
5 with him, and he was right.
6 BY MR. BELONGIA:
7 Q. So I'm not inquiring into any of those
8 things, and I don't want to know any of your
9 conversations.
10 MR. RAPHAEL: So when he asks you a question,
11 if you can answer it without referencing
12 anything I may have told you or any of the
13 people working at my office may have told you,
14 cool. If not, you can't answer it.
15 THE WITNESS: Okay.
16 BY MR. BELONGIA:
17 Q. The alleged transaction at the alleged
18 deficient ATM occurred on August 2nd, 2007, and
19 the lawsuit was filed on November 21st, 2007.
20 Do you recall approximately when you
21 first contacted Mr. Raphael to discuss a
22 potential lawsuit?
23 A. No.
24 Q. Would it be fair to say that you did

48

1 not participate in the drafting of the lawsuit?
2 MR. RAPHAEL: Objection. Form.
3 THE WITNESS: What do you mean in the
4 drafting of the lawsuit?
5 BY MR. BELONGIA:
6 Q. You didn't sit at a computer and work
7 on a draft lawsuit with Mr. Raphael? You left
8 that to the attorneys to prepare the pleadings,
9 is that right?
10 A. The attorney does everything for me.
11 Q. And I believe you testified -- and if I
12 already asked this and you answered, I
13 apologize. I'm getting old and senile.
14 But you did not ever take any
15 photographs of the ATM at issue, correct?
16 A. That's correct.
17 Q. Prior to coming to this deposition
18 today, did you review any documents to prepare
19 for this deposition?
20 MR. RAPHAEL: I'm going to object to work
21 product, attorney-client privilege but I'll let
22 her -- without waiving that objection and
23 subject to that objection, answer the question.
24 THE WITNESS: I just looked --

49

1 MR. RAPHAEL: He asked a yes or no question.
2 THE WITNESS: Oh, I'm sorry. Yes.
3 BY MR. BELONGIA:
4 Q. What documents did you review?
5 MR. RAPHAEL: Now I'm going to object based
6 on the work product and attorney-client
7 privilege and instruct my client not to answer
8 that question.
9 If you ask a different question, it'll
10 be okay.
11 BY MR. BELONGIA:
12 Q. Did you review photographs?
13 MR. RAPHAEL: I'm not objecting.
14 THE WITNESS: Yes.
15 MR. BELONGIA: And can we stipulate those are
16 the photographs that you have not yet produced
17 in this case?
18 MR. RAPHAEL: No, I wouldn't stipulate to
19 that. That would be problematic.
20 BY MR. BELONGIA:
21 Q. What photographs did you review?
22 MR. RAPHAEL: If you can tell him, you can
23 answer.
24 THE WITNESS: It was of the ATM at the

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1 Diamond Bank.
2 BY MR. BELONGIA:
3 Q. Were these photographs taken after the
4 time that you used the machine?
5 MR. RAPHAEL: Objection. Foundation.
6 THE WITNESS: I wouldn't know.
7 MR. RAPHAEL: You want me to make this
8 easier?
9 MR. BELONGIA: Yeah.
10 MR. RAPHAEL: I showed her the website photo,
11 and the two photos you guys took. If you would
12 ask her about those photos, she would have some
13 familiarity with them.
14 MR. BELONGIA: Okay.
15 MR. RAPHAEL: And as far as I know, I didn't
16 show her any other photos, other than those.
17 BY MR. BELONGIA:
18 Q. After you completed your transaction at
19 the ATM at Diamond Bank on August 2nd, 2007, did
20 you ever notify anyone at the bank to alert them
21 to the fact that the ATM did not have a fee sign
22 posted on its face?
23 MR. RAPHAEL: Objection. Asked and answered.
24 You can answer.

51

1 THE WITNESS: No.
2 BY MR. BELONGIA:
3 Q. And earlier you testified that you
4 never notified them that you were charged a fee,
5 but this was about whether or not you notified
6 them about the fee sign being posted.
7 And why did you not choose to notify
8 them of the fee notice not being on the ATM
9 machine?
10 MR. RAPHAEL: Objection. Form of the
11 question. You can answer.
12 THE WITNESS: I didn't think about it at the
13 time.
14 BY MR. BELONGIA:
15 Q. I guess I'll ask a follow-up question
16 here. Why didn't you think about it at the
17 time?
18 MR. RAPHAEL: Objection. Form, foundation,
19 calls for speculation.
20 THE WITNESS: I don't know.
21 BY MR. BELONGIA:
22 Q. Prior to today, besides this incident
23 at Diamond Bank, besides the incident at Credit
24 Union 1, has there been any other instance where

52

13 (Pages 49 to 52)

1 you used an ATM machine that did not have a fee
 2 sign posted and you were charged for the
 3 transaction?
 4 A. I can't remember right now.
 5 MR. BELONGIA: Just give me a minute here.
 6 MR. RAPHAEL: You're almost done?
 7 MR. BELONGIA: Yeah.
 8 BY MR. BELONGIA:
 9 Q. Do you recall while performing the
 10 transaction at the ATM at Diamond Bank what
 11 specifically the fee notice said on the screen?
 12 A. On the screen?
 13 Q. Correct.
 14 A. It said \$2.
 15 Q. And it said you would be charged \$2 if
 16 you continued with the transaction, is that
 17 right?
 18 A. Yes.
 19 Q. And we agree that you continued with
 20 the transaction?
 21 A. Yes.
 22 Q. After you leave the doctor's office, do
 23 you typically go home from there?
 24 A. Most of the time.

53

1 Q. How do you get home from the doctor's
 2 office? Do you take the EI or take a cab?
 3 A. I take the EI.
 4 Q. And that's the Brown Line that you use?
 5 A. Yes.
 6 Q. Do you recall after using the ATM at
 7 Diamond Bank whether you proceeded to take the
 8 EI home, or did you take a cab?
 9 A. I know I don't take cabs, so I don't
 10 remember if I took the EI home.
 11 Q. If you don't use the EI, what other way
 12 do you use to get home?
 13 A. I take a walk down Clark by the lake
 14 going north.
 15 Q. And how long does it take you to walk
 16 home?
 17 A. Well, I don't walk all the way home. I
 18 just walk up one of the big streets, maybe
 19 Diversey, and then take the bus.
 20 MR. BELONGIA: Nothing further. I'll order.
 21 Signature?
 22 MR. RAPHAEL: Reserved. I might have a
 23 question. Off the record for a second.
 24

54

1 (WHEREUPON, a discussion was had
 2 off the record.)
 3 MR. BELONGIA: We're done.
 4 (FURTHER DEPONENT SAITH NAUGHT.)
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1 IN THE UNITED STATES DISTRICT COURT
 2 FOR THE NORTHERN DISTRICT OF ILLINOIS
 3 EASTERN DIVISION
 4 CARMEN FLORES,)
 5 individually and on)
 6 behalf of all others) No. 07 C 6403
 7 similarly situated,) Judge Hibbler
 8 Plaintiff,) Magistrate
 9 vs.) Judge Valdez
 10 DIAMOND BANK,)
 11 Defendant.)
 12 I, CARMEN FLORES, being first duly sworn,
 13 on oath say that I am the deponent in the
 14 aforesaid deposition taken on June 24, 2008;
 15 that I have read the foregoing transcript of my
 16 deposition, and affix my signature to same.
 17
 18 CARMEN FLORES
 19
 20 Subscribed and sworn to
 21 before me this day
 22 of , 2008
 23
 24 Notary Public

56

1 STATE OF ILLINOIS)
 2) SS:
 3 COUNTY OF COOK)
 4 I, KIMBERLEY M. TITSWORTH, a notary
 5 public within and for the County of Cook County
 6 and State of Illinois, do hereby certify that
 7 heretofore, to-wit, on June 24, 2008, personally
 8 appeared before me, at 53 West Jackson
 9 Boulevard, Suite 315, Chicago, Illinois,
 10 CARMEN FLORES, in a cause now pending and
 11 undetermined in the United States District
 12 Court, Northern District, wherein CARMEN FLORES,
 13 individually and on behalf of all others
 14 similarly situated, is the Plaintiff, and
 15 DIAMOND BANK is the Defendant.
 16 I further certify that the said
 17 CARMEN FLORES was first duly sworn to testify
 18 the truth, the whole truth and nothing but the
 19 truth in the cause aforesaid; that the testimony
 20 then given by said witness was reported
 21 stenographically by me in the presence of the
 22 said witness, and afterwards reduced to
 23 typewriting by Computer-Aided Transcription, and
 24 the foregoing is a true and correct transcript

57

1 of the testimony so given by said witness as
 2 aforesaid.
 3 I further certify that the signature to
 4 the foregoing deposition was reserved by counsel
 5 for the respective parties and that there were
 6 present at the deposition the attorneys
 7 hereinbefore mentioned.
 8 I further certify that I am not counsel
 9 for nor in any way related to the parties to
 10 this suit, nor am I in any way interested in the
 11 outcome thereof.
 12 IN TESTIMONY WHEREOF: I have hereunto
 13 set my hand and affixed my notarial seal this
 14 day of , 2008.

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 19 *Kimberley M. Titsworth*

20 NOTARY PUBLIC, COOK COUNTY, ILLINOIS
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58

1 McCorkle Court Reporters, Inc.
 2 200 N. LaSalle Street, Suite 300
 3 Chicago, Illinois 60601-1014

4 DATE: June 27, 2008
 5 Consumer Advocacy Center, P.C.
 6 ATTN: Mr. Lance A. Raphael
 7 180 West Washington Street, Suite 700
 8 Chicago, Illinois 60602
 9 IN RE: Flores vs. Diamond Bank
 10 COURT NUMBER: 07 C 6403
 11 DATE TAKEN: June 24, 2008
 12 DEPONENT: Carmen Flores

13 Dear Mr. Raphael:

14 Enclosed is the deposition transcript for the
 15 aforementioned deponent in the above-entitled
 16 cause. Also enclosed are additional signature
 17 pages, if applicable, and errata sheets.
 18 Per your agreement to secure signature, please
 19 submit the transcript to the deponent for review
 20 and signature. All changes or corrections must
 21 be made on the errata sheets, not on the
 22 transcript itself. All errata sheets should be
 23 signed and all signature pages need to be signed
 24 and notarized.
 After the deponent has completed the above,
 please return all signature pages and errata
 sheets to me at the above address, and I will
 handle distribution to the respective parties.

25 If you have any questions, please call me at the
 26 phone number below.
 27 Sincerely,
 28 Margaret Setina Court Reporter:
 29 Signature Department Kimberley M. Titsworth
 30 cc: Mr. Belongia

59

1 STATE OF ILLINOIS)

2) SS:

3 COUNTY OF C O O K)

4 I, KIMBERLEY M. TITSWORTH, a notary
5 public within and for the County of Cook County
6 and State of Illinois, do hereby certify that
7 heretofore, to-wit, on June 24, 2008, personally
8 appeared before me, at 53 West Jackson
9 Boulevard, Suite 315, Chicago, Illinois,
10 CARMEN FLORES, in a cause now pending and
11 undetermined in the United States District
12 Court, Northern District, wherein CARMEN FLORES,
13 individually and on behalf of all others
14 similarly situated, is the Plaintiff, and
15 DIAMOND BANK is the Defendant.

16 I further certify that the said
17 CARMEN FLORES was first duly sworn to testify
18 the truth, the whole truth and nothing but the
19 truth in the cause aforesaid; that the testimony
20 then given by said witness was reported
21 stenographically by me in the presence of the
22 said witness, and afterwards reduced to
23 typewriting by Computer-Aided Transcription, and
24 the foregoing is a true and correct transcript

1 of the testimony so given by said witness as
2 aforesaid.

3 I further certify that the signature to
4 the foregoing deposition was reserved by counsel
5 for the respective parties and that there were
6 present at the deposition the attorneys
7 hereinbefore mentioned.

8 I further certify that I am not counsel
9 for nor in any way related to the parties to
10 this suit, nor am I in any way interested in the
11 outcome thereof.

12 IN TESTIMONY WHEREOF: I have hereunto
13 set my hand and affixed my notarial seal this
14 27 day of June, 2008.



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19 Kimbrey M. Tittsworth

20 NOTARY PUBLIC, COOK COUNTY, ILLINOIS
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A			August	
above-ent...	21:15	14:2,5,9,22	13:19 17:18	33:4,8,9,10
1:14 59:11	age	15:7,9,22	19:3,11	33:16,20
accessed	7:11	16:3,9,15	20:9 21:4	34:17 35:16
24:23	ago	17:15 19:2	21:10,21	35:19 36:3
accessing	32:24 36:12	19:3,7	22:10,16,21	36:7,11,19
26:8	agree	20:16 21:5	24:24 26:9	36:23 39:8
accord	18:20 26:3	21:9 22:9	27:1 29:24	39:14 40:2
4:10	37:16 38:2	22:12,15,16	32:2,15	41:8,17,21
account	38:23 47:17	22:20 23:11	35:17 36:10	41:24 43:4
13:7 14:24	48:4 53:19	23:14,18	39:24 41:6	43:20 44:9
16:15 24:17	agreement	25:6,12,17	41:21 43:8	44:22 47:10
24:23 25:1	4:12 48:2	26:9,15,24	43:11 44:20	51:1,19,20
25:3,9,16	59:13	27:1 28:1	45:5 48:18	52:23 53:10
25:18 28:16	alert	28:13 29:14	51:19	54:7 56:10
28:23 32:20	51:20	29:16 32:3	Avenue	57:15 59:7
32:21,22	alerted	33:8,16	9:2 18:16,18	bankruptcy
33:2,5	37:10	34:1,14	19:1,10,15	9:24 10:2,3
accounting	alerting	35:1,18	20:12,16	10:6,9,15
8:16,17	36:21	36:11,19,21	30:16,23	10:19
accounts	alleged	38:23,23	33:21,23	based
13:9,10,20	13:18 17:16	40:1,12,15	34:1,8,11	36:12 50:5
13:23 14:3	47:10 48:17	40:16,17	34:12,19	basis
14:11,23,23	48:17	41:6,7,8,20	aware	12:16
23:21 24:5	alternative	41:24 43:8	44:21	Bates
24:6,9,11	30:9 40:17	43:12,14,20		39:3
24:13,15,23	amount	44:9,10,22		behalf
action	27:24	44:22 46:5		1:6 47:9,9
42:3	anytime	46:11 47:3		56:6 57:13
actions	33:8	47:10 48:18	background	Belongia
12:24 42:18	apologize	49:15 50:24	6:11	2:10,11 3:4
actual	49:13	51:19,21	bad	4:3,7,9,16
26:14	APPEARANCES	52:8 53:1	bank	4:23 5:7,14
additional	2:1	53:10 54:6	1:10 6:6,6	5:21 6:3,10
59:11	appeared	ATM's	12:13 13:7	6:22 10:10
address	57:8	31:18 46:19	13:9,10,20	10:13,20
6:23 18:8,10	applicable	attend	13:22,23	12:6,9,18
59:18	4:11 59:12	8:11	14:3,3,20	14:18 15:11
admissible	appointment	attended	14:21,23,24	16:5,11,14
29:6	21:17 22:1	8:12,12	15:8,22	16:19 17:14
Advocacy	appointments	ATTN	18:4,4,21	19:20 20:3
2:2 59:4	21:22	59:5	18:24 19:4	23:3,9 24:2
affix	approved	attorney	19:7 20:17	25:23 26:5
56:16	12:15	6:6 11:18	21:10 22:10	27:5,10,15
affixed	approximate	17:10 49:10	22:15 23:21	27:19 28:10
58:13	22:19	attorneys	23:21 24:9	28:20 29:2
aforement...	approxima...	49:8 58:6	26:9,17	29:4,7,12
59:11	48:20	attorney-...	27:1 28:1	29:22 31:6
aforesaid	Armitage	12:3 42:7,15	28:13,22	32:1 33:15
56:14 57:19	30:11,16,23	47:22 49:21	29:15,16,19	34:7,23
58:2	assumes	50:6	30:19 31:19	36:1,9,17
afternoon	44:12	attorney-...	32:3,16,17	37:3,15
	ATM	47:23	32:23 33:3	38:1,10,18

39:12,19,23	54:2,8	certify	class	contact
40:6,13,23	cabs	57:6,16 58:3	12:15 13:4	39:8,14
41:13,19	54:9	58:8	42:3,17	contacted
42:10,17,24	calculate	changed	clean	48:21
43:2,18	7:12	19:23	18:2	continue
44:2,15,19	capital	changes	clearly	35:20 36:3
45:11,22	7:5,6	59:14	5:3	37:4,9 38:5
48:6,16	card	charge	client	38:11
49:5 50:3	14:2,13	38:24 43:22	28:22 29:10	continued
50:11,15,20	15:14 16:3	charged	50:7	53:16,19
51:2,9,14	17:15 20:21	32:13,16	clients	conversation
51:17 52:2	21:2 25:6	33:10 36:22	15:22	46:9,13,17
52:14,21	25:12,17	37:6,11,17	close	47:1
53:5,7,8	cards	37:20 38:4	18:6,13,21	conversat...
54:20 55:3	14:5,8,22	38:6 39:4,9	closed	48:9
59:23	15:23 23:11	39:17 43:14	16:9	Cook
best	23:14,18	52:4 53:2	closer	1:15 57:5
18:23	Carmen	53:15	34:8,9,12	58:20
big	1:4,13 3:3	check	code	cool
30:22 54:18	4:5 6:18	20:21	7:9	48:14
block	10:12 44:21	Chicago	college	corner
30:11,12	56:4,12,17	1:18 2:6,14	8:7	20:15
blue	57:10,12,17	7:1,7 9:3	comp	correct
46:18	59:8	57:9 59:2,6	12:24	4:7 10:1
Book	carry	child	company	11:5 12:14
8:22,23	14:6,10	25:4,10	8:24	13:6 15:10
Boulevard	case	children	Complaint	15:16 18:16
1:17 2:12	4:18 6:7	7:18 24:4	28:24	18:17 23:11
57:9	11:3,8,12	chiropractor	completed	23:12 24:9
branch	12:11,13,19	19:12,13,14	28:12 38:19	24:10,11,12
18:4	12:20 13:4	20:5 29:20	51:18 59:17	25:2,5,8,10
break	16:2 43:3,4	chiroprac...	computer	25:11,13,14
5:22,23 6:1	50:17	19:16	49:6	25:20 26:6
6:1	cases	choose	Computer-...	26:10,11,18
brief	13:5 42:4	52:7	57:23	26:21,22,23
6:4	cash	chose	concerned	27:2 28:16
brought	20:21 21:2,2	38:4,11	42:12	35:13,14
6:7 12:13	29:21 33:8	chosen	concerning	38:13,20
Brown	43:21	37:17 39:15	33:4	42:24 49:15
31:9,11,13	cause	40:17 41:7	conclusion	49:16 53:13
54:4	1:14 57:10	claim	17:1	57:24
building	57:19 59:11	12:12	confidential	corrections
33:18,19,24	cc	claims	15:2 16:13	59:14
34:9,10,13	59:23	11:15,16,23	17:4,8	counsel
bus	ceilings	12:12	confident...	4:16 16:21
30:10 31:14	4:24	Clark	15:13 16:22	47:8,13,20
54:19	cell	19:1,10	Consumer	47:20 58:4
business	22:13	20:16 30:10	2:2 59:4	58:8
8:15	Center	31:13 33:21	consummate	Count
	2:2 59:4	33:23 34:1	36:3 37:9	28:24 29:3,3
C	certificate	34:6,14,20	consummating	29:4
cab	8:8	54:13	36:18	County

1:16 57:3,5 57:5 58:20 couple 30:6 course 9:21 coursework 8:15 covered 20:23 crazy 28:7 credit 10:23 11:4 11:11 12:1 12:11 20:21 21:2 52:23 Crevy 20:6,11,20 21:22 22:2 Crevy's 30:1,5,5,14 31:15,18 cross-ref... 16:1 CSR 1:23 current 6:23 7:11 43:3 currently 8:19 13:7 14:10 customer 36:23 44:4 C-a-r-m-e-n 4:8 C-r-e-v-y 20:8	defendant 1:11 2:16 6:6 56:11 57:15 deficient 48:18 degree 8:9 Department 59:22 deponent 55:4 56:13 59:8,11,13 59:17 deposit 26:16,21 28:15,19,21 deps 26:1 describe 9:9 30:8 described 31:8 destroyed 17:1 details 24:21 Diamond 1:10 6:6 12:13 18:21 18:24 20:17 21:10 22:9 22:15 26:9 26:17 27:1 28:1,13,22 29:15,16 30:19 31:19 32:3 33:16 36:11,19 39:8,14 40:1 41:8 41:20,24 43:4 44:9 47:10 51:1 51:19 52:23 53:10 54:7 56:10 57:15 59:7 different 41:7 50:9 digits 7:13	directly 30:1 disclosure 33:7 disclosures 33:4 discovery 1:13 9:22 16:2 29:8 discuss 48:21 discussion 12:7 17:12 38:16 55:1 dismissal 22:5 distribution 59:18 District 1:1,2 10:15 56:1,2 57:11,12 Diversey 18:14 54:19 DIVISION 1:3 56:3 divorced 7:17 doctor's 21:16 53:22 54:1 documents 47:21 49:18 50:4 Dr 20:6,11,20 21:22 22:2 30:1,5,5,14 31:15,18 draft 49:7 drafting 49:1,4 drawer 15:18 drink 5:24 drive 28:7	3:1,10 earlier 23:10 26:7 52:3 EASTERN 1:3 56:3 echo 5:2 education 8:6 either 7:24 El 54:2,3,8,10 54:11 emphatic 31:4 employed 8:19,21 employees 15:22 employer 18:15 30:1 enclosed 59:10,11 encyclopedia 8:24 engaged 43:4 47:13 ensure 17:2 entire 17:23 entrance 34:16 errata 59:12,14,15 59:17 establish 15:4,6,8 everybody 5:1 evidence 15:4,6 44:13 EXAMINATION 3:2 6:21 examined 6:19 exhibit 3:12 16:13 16:14 17:5 17:8 27:6,8	27:11,12 39:2 expect 11:18 explain 6:4 12:5 explore 41:1 eyes 15:2 F fabulous 46:19 face 47:4 51:22 fact 5:10 36:21 38:6 46:19 51:21 facts 44:12 failure 47:10 fair 5:5,19 12:23 13:3 23:4 24:22 26:12 26:20 28:11 39:2,13 47:12 48:24 familiarity 51:13 family 42:2,22 far 51:15 farthest 34:10 fashion 31:2 fee 32:4,10,14 32:16 33:10 35:11,15,19 35:23 36:2 36:6,22 37:1,6,11 37:17,20 38:4,13 39:4,9,15 39:17 40:15
D database 9:13 DATE 59:4,8 daughter 45:2,3 46:10 47:2,3 Dear 59:9 decide 29:15			E E	

41:6 43:13 43:14,22 44:6,9,22 46:5,11,19 47:4,11 51:21 52:4 52:6,8 53:1 53:11 feel 45:16 field 8:1 file 10:2 42:13 42:21 filed 9:23 10:6,8 10:14,19 11:21,22 12:21,23 42:18 47:8 48:19 financial 13:13 18:5 find 41:17 Fine 14:19 finish 35:2,7 finished 37:14 firm 8:3 16:24 first 6:19 19:6 29:13 46:13 48:21 56:12 57:17 first-named 12:16 Flores 1:4,13 3:3 3:12 4:5,13 6:18 10:12 12:11,17,19 17:7 27:7 27:14 39:3 44:21 56:4 56:12,17 57:10,12,17 59:7,8	Flores's 16:15 folded 16:22 follows 6:20 follow-up 52:15 foregoing 56:15 57:24 58:4 form 23:1,6,23 29:17 31:20 33:11 34:22 35:21 36:5 36:15,24 37:12 39:10 40:3,9,18 41:9 43:15 43:23 44:11 45:10 49:2 52:10,18 forth 47:18 foundation 29:18 33:12 37:21 40:19 41:9 42:5 44:12 45:10 51:5 52:18 four 7:13 free 36:8,13 friend 45:9,12,21 45:23,24 46:1,3,6,7 46:8 friends 42:2,22 front 35:2 39:3 FSB 6:7 fulfilled 9:12 fulfillment 9:8,10 full 4:6	further 41:1 54:20 55:4 57:16 58:3,8 F-l-o-r-e-s 4:8 <hr/> G general 4:19 6:11 generally 9:9 11:14 gesture 34:4 give 11:18 16:17 18:12 22:19 53:5 given 4:13 6:3 57:20 58:1 God 7:12 Good 10:18 ground 4:17 17:20 47:15 guess 15:5 52:15 guidelines 4:19 guys 51:11 <hr/> H H 3:10 half 9:17 30:11 hand 58:13 handle 59:18 handles 9:13 hands 34:3 happen 5:9 happy 5:11	Harold 8:13 hear 5:1 hereinbefore 58:7 heretofore 57:7 hereunto 58:12 hey 46:18 Hibbler 1:7 56:7 high 4:24 highest 8:6 hours 9:19 house 18:7 human 17:23 hypothetical 41:11 <hr/> I ID 3:11 identific... 17:9 27:9 identified 9:23 32:22 38:24 identifies 39:4 identity 15:20 important 4:23 5:2,14 17:20,21 incident 52:22,23 incomplete 41:10 incur 15:24 individually 1:5 56:5 57:13 information	12:3 17:3 42:16 injury 13:1 inquiring 10:11 48:7 inside 33:17 inspect 15:14 instance 52:24 institution 13:14,16 instruct 50:7 insurance 20:24 interested 58:10 intersection 18:12 involving 11:1 12:11 issue 49:15 issued 38:20 issues 15:21 it'll 15:11 50:9 <hr/> J Jackson 1:17 2:12 57:8 Jewel's 18:14 job 9:7 joint 23:19 Judge 1:7,9 56:7,9 June 1:16 56:14 57:7 59:4,8 <hr/> K K 57:3
---	---	---	---	---

keep 15:1 29:8 kept 15:17 kids 23:19 24:16 24:17 Kimberley 1:15,23 57:4 59:22 knowledge 44:8 known 5:8	linked 14:11 listed 9:22 litigation 10:22 17:1,2 46:4 little 15:12 26:7 41:1 LLP 2:10 located 9:1 18:15,24 19:13 33:17 34:17 location 29:16 locations 18:21 locked 15:18 long 5:22 9:5 13:22 20:10 33:1 54:15 louder 28:6 loudly 5:1	majority 22:3 manager 9:10 Margaret 59:22 marital 7:16 mark 2:11 16:12 27:5 marked 3:11 17:4,9 27:8 marketing 8:15 McCorkle 59:1 McVicker 6:24 mean 11:16 49:3 means 6:14 26:3 meant 9:10 medical 20:23 memory 45:16 mentioned 58:7 Michigan 9:2 18:16,18 minute 53:5 minutia 24:20 moment 36:12 money 15:7 21:9 26:13,15,19 26:24 27:22 27:24 28:12 28:15 44:5 monitor 9:11 move 4:20 M-c-V-i-c... 7:4	<hr/> N <hr/> N 3:1 59:1 Narragansett 18:13 NAUGHT 55:4 nearest 18:12 neither 18:20 never 10:6 12:23 13:4 20:15 30:18 44:16 52:4 new 19:23 nods 5:18 non-Diamond 36:23 non-TCF 33:9 35:15 35:19 36:2 43:20 north 6:24 19:1,10 19:14 20:11 20:16 30:15 30:22 33:21 33:23 34:1 34:8,11,12 34:19 54:14 Northern 1:2 10:15 56:2 57:12 notarial 58:13 notarized 59:16 notary 1:15 56:22 57:4 58:20 notice 1:19 4:12 32:5,10 35:11,15,20 35:23 36:2 36:6,20 37:5,18 38:3,12	39:16 40:10 40:15 41:6 43:13 44:9 44:22 52:8 53:11 notices 46:5,11,20 notified 52:4,5 notify 51:20 52:7 November 48:19 number 3:11 7:14 14:24 15:14 15:15,17 16:16 17:5 22:19 59:7 59:20 numbers 16:15 <hr/> 0 <hr/> 0 57:3,3 oath 56:13 object 39:8,14 49:20 50:5 objecting 50:13 objection 12:2 22:23 23:6,23 27:3 29:17 31:20 33:11 34:22 35:21 36:5,15,24 37:12,21 38:8 39:10 40:3,9,18 41:9,15 42:5 43:15 43:23 44:11 45:10 49:2 49:22,23 51:5,23 52:10,18 observing 40:1
<hr/> L <hr/> Take 31:12 54:13 Lance 2:3 59:5 LaSalle 59:1 late 21:15 lawsuit 10:21,24 11:15,21,22 13:19 47:8 48:19,22 49:1,4,7 lawsuits 12:21 lawyer 47:16 lawyers 24:21 learned 47:2 leave 22:6 53:22 left 43:8 49:7 legal 7:24 11:18 43:5 44:21 46:10 letter 10:11 level 8:6 License 1:24	<hr/> M <hr/> machine 5:17 20:17 21:6,9,13 21:13 22:17 22:20 32:3 32:4,5,7 35:3,6,11 35:12,18,19 36:4,19 40:15 43:12 44:23 46:12 51:4 52:9 53:1 machines 43:20 44:5 Magistrate 1:8 56:8 maintained 13:22 15:11 16:23			

obviously 42:19 47:6 occurred 48:18 occurrence 13:19 17:16 offended 6:13 office 15:17 19:24 30:2,5,14 31:15,19 43:5 48:13 53:22 54:2 old 7:22 49:13 once 17:23 one-block 31:18 on-screen 36:20 37:18 38:3,12 39:16 open 32:20 opened 33:2 opportunity 6:5,15 order 4:20 9:14 54:20 orders 9:12 outcome 58:11 outside 16:24 33:17 33:19 o'clock 22:4,8	4:12 12:10 58:5,9 59:18 pause 22:24 pay 20:21 21:2 44:5 Peak 19:17,18,19 19:22 20:11 pending 5:23 10:24 42:3,17 46:4 57:10 people 48:13 perform 43:13,21 Performance 19:17,22 20:11 performed 33:8 performing 35:5 53:9 period 20:10,15 21:21 personal 12:24 personally 57:7 Pete 19:18 phase 9:22 phone 22:13 59:20 photo 51:10 photographs 41:24 49:15 50:12,16,21 51:3 photos 51:11,12,16 physician 19:21 pick 31:11 piece	15:1,16 16:20 place 16:23 placed 32:5 plaintiff 1:8 2:8 10:22 11:1 11:8,20,21 12:16 13:5 46:4 56:8 57:14 plaintiffs 11:10 42:3 pleadings 49:8 possible 4:21 post 44:22 posted 35:12 46:11 46:20 47:4 47:11 51:22 52:6 53:2 potential 48:22 predecessors 20:18 preliminary 12:15 prepare 49:8,18 presence 57:21 present 58:6 president 14:21,21 15:8 previously 9:23 prices 9:14 prior 19:2 20:9 21:21 22:15 22:20 32:15 35:17 43:3 43:11 44:20 49:17 52:22	privilege 12:3 42:8 49:21 50:7 privileged 47:24 probably 40:21 41:3 problematic 50:19 proceed 39:15 proceeded 54:7 process 4:20 processing 9:15 produced 14:22 15:22 16:2 23:15 25:17 50:16 product 12:3 42:7,16 47:23 49:21 50:6 public 1:15 42:15 56:22 57:5 58:20 purpose 21:14 23:17 26:8 43:6 purposes 17:22 pursuant 1:18 4:12 37:18 P-e-a-k 19:19 P.C 2:2 59:4 p.m 1:17	2:3 6:12 10:8,18 12:2,14 14:16,19 15:24 16:3 16:8,12,17 17:11 19:18 20:1 22:23 23:6,23 25:21,24 27:3,13,17 28:6,18,21 29:3,5,8,17 30:17,24 31:20 33:11 34:3,22 35:21 36:5 36:15,24 37:12,21 38:8,15 39:10 40:3 40:9,18 41:9,15 42:5,11,20 43:5,15,23 44:11,17 45:10,14 48:2,4,10 48:21 49:2 49:7,20 50:1,5,13 50:18,22 51:5,7,10 51:15,23 52:10,18 53:6 54:22 59:5,9 rarely 23:16 reason 5:22 19:9 21:5 24:3 recall 12:22 13:2 20:19 21:4 21:8,20 26:7,23 28:3 33:3,7 34:16 36:20 39:24 48:20 53:9 54:6 receipt
P			Q	
pages 59:12,15,17 paper 15:1,16 16:20 participate 49:1 parties			R	

27:21 38:20	46:15,16,22	30:4,7 31:8	30:21 46:1	smooth
38:22,24	46:22 53:4	routes	show	4:21
39:7	54:10	30:6,8,9	51:16	Social
receive	remembered	31:7	showed	7:14
8:8	29:20	rule	51:10	soft
receiving	removed	17:21 47:15	shrugs	28:8
39:7	44:9,18	rules	5:18	sole
recognize	reopen	4:11,17	side	24:24 32:23
27:11,17	29:5		33:24 34:9	solely
recollection	repeat	S	34:10,19,20	45:24
18:23 27:23	37:23 39:18	S	sign	South
record	repetitive	3:10	15:16 47:11	18:19
4:4,9 6:8,16	24:20	safe	51:21 52:6	speak
12:4,8,9	rephrase	16:23	53:2	4:24 5:3
16:14 17:6	5:11	safety	signage	6:16
17:11,13	reported	17:2	40:1	specific
18:2 38:15	1:23 57:20	SAITH	signatory	8:14 19:21
38:17 39:20	reporter	55:4	24:14,24	21:5 26:8
42:15 54:23	5:4,16 39:21	school	25:4,10,18	32:22
55:2	59:22	8:4	32:23	specifically
reduced	Reporters	screen	signature	21:8 53:11
57:22	59:1	53:11,12	54:21 56:16	speculation
redundant	represented	seal	58:3 59:11	40:19 41:10
24:19	27:12	58:13	59:13,14,15	52:19
referencing	Representing	second	59:17,22	spell
48:11	2:8,16	6:4 8:7 12:4	signed	4:4 7:2 20:7
reflect	requested	17:11 42:6	16:21 59:15	spelled
4:9	39:21	54:23	59:15	4:6
refresh	requirement	secure	similar	Stamp
27:23	44:21 46:11	59:13	12:12	39:3
regarding	reserved	Security	similarly	standard
42:17 46:4	54:22 58:4	7:14	1:7 56:7	9:18
47:9	respective	Sedgwick	57:14	standing
related	58:5 59:18	31:9	simple	22:1 34:14
58:9	respond	seeking	41:5	staple
relatives	5:15	8:14	Sincerely	16:9
42:22	response	senile	59:21	start
remember	5:19 41:4	49:13	sit	17:24 29:9
13:24 20:22	46:20	sent	43:19 49:6	46:13
21:3,7,11	responses	10:11	sitting	started
21:12,18	5:16 11:19	Setina	47:7	37:2 46:14
22:14 26:11	return	59:22	situated	46:16,23
26:13,15	59:17	settlement	1:7 56:7	States
27:2 28:4	revealed	12:15	57:14	1:1 56:1
30:7 31:22	15:18 16:24	SHAPIRO	slight	57:11
32:18,19,24	review	2:10	5:2	status
33:6,13,14	49:18 50:4	shared	slowly	7:16
34:21,24	50:12,21	47:20	5:3	statutes
40:4,11	59:13	sheets	Smith	4:11
43:10,16,17	room	59:12,14,15	11:3,6,11	steered
45:4,7,18	4:24 5:2	59:18	12:10,16,19	29:10
45:18 46:14	route	she's	13:4 43:3	stenograp...

57:21 sticker 41:17 stipulate 12:10 16:8 25:22 26:2 26:3 27:13 28:18 50:15 50:18 stipulating 28:21 stipulation 15:12 16:21 stopped 29:21 37:19 street 2:4 7:2 30:13,16,22 59:1,5 streets 54:18 strictly 15:2 strike 26:13 29:13 29:23 34:15 35:16 subject 12:14 29:6 41:11 49:23 submit 59:13 Subscribed 56:19 suit 58:10 Suite 1:18 2:5,13 57:9 59:1,5 supervisor 9:8 sworn 4:2 6:19 56:12,19 57:17	54:2,2,3,7 54:8,9,13 54:15,19 taken 1:14 4:10,11 41:23 51:3 56:14 59:8 TCF 13:17,20,23 14:3 18:4 23:21 24:9 32:17,23 33:2,8 telling 46:15 test 45:16 testified 6:20 23:10 24:4 26:6 33:20 35:10 49:11 52:3 testify 57:17 testimony 20:14 36:12 40:14 57:19 58:1,12 theft 15:20 thereof 58:11 third 25:9 thought 10:18 three 13:12 14:7,8 14:11 23:11 23:21 24:9 24:11,13 title 9:7,10 Titworth 1:15,23 57:4 59:22 told 30:18 45:2 45:20 46:2 46:6 48:12 48:13 toss	16:4 total 14:8 24:9 to-wit 57:7 transaction 26:14 35:2,6 35:8,13,20 36:4,13,19 37:2,5,10 37:14,19 38:5,7,12 38:19 39:9 39:16 43:13 48:17 51:18 53:3,10,16 53:20 transactions 15:24 18:5 28:13 transcript 17:22 56:15 57:24 59:10 59:13,15 Transcrip... 57:23 treat 20:20 treating 20:10 true 57:24 truth 57:18,18,19 Tuesday 1:16 twice 27:4 7:21 10:14 13:5 20:13 23:14,17 24:6 40:24 51:11 two-year 20:15 21:21 type 8:8,14 31:2 33:3 typewriting 57:23 typically	21:20 53:23 U uh-huhs 5:18 understand 5:7,10 15:20 41:4 understan... 36:11 44:3 undetermined 57:11 Union 10:23 11:4 11:12 12:1 12:11 52:24 United 1:1 56:1 57:11 use 5:23 18:5 21:5,13 29:15 34:3 34:24 41:7 43:20 44:4 54:4,11,12 usually 18:5,6 21:24 22:7 utilize 20:16 V V 7:5,6 Valdez 1:9 56:9 verbal 5:15,19 verify 15:15,24 versus 11:3 12:11 29:16 vice 14:21 vicinity 19:10 vs 1:9 56:9 59:7	W wait 17:22 22:24 35:1 waiting 35:6 waiving 49:22 walk 30:11 31:10 54:13,15,17 54:18 walked 43:12 WaMu 44:1,4 warehouses 9:11 Washington 2:4 8:13 59:5 washroom 5:24 Water 18:19 website 51:10 week 9:16,18,19 Wells 19:14 20:11 30:13,15 West 1:17 2:4,12 57:8 59:5 Whereabouts 18:18 30:13 WHEREOF 58:12 withdraw 26:19 44:5 withdrawal 33:9 43:21 withdrew 26:15 27:22 27:24 28:12 28:24 witness 3:2 4:1,5,8 4:15,22 5:6 5:13,20 6:2 6:9,17
--	---	--	--	--

19:19 23:2	X	32:2,15	37
23:8 26:4	X	35:17 36:10	9:17
27:16,18	3:1,10	39:24 41:6	
28:9 29:19		41:21 43:8	4
30:22 31:22	Y	43:11 44:20	4:00
33:13 34:5	year	45:5 48:18	22:4,8
35:23 36:6	8:7 10:2	51:19	4:15
36:14 37:1	years	2:20	22:8
37:13,23	9:6 13:24	1:17	40-hour
38:9 39:11	20:13 32:24	200	9:16
39:22 40:4		59:1	
40:10,21	\$	2007	5
41:12,16	\$2	13:19 17:18	5:00
43:1,16	39:4 53:14	19:3,11	22:4
44:1,14	53:15	20:9 21:4	53
45:20 48:3	\$50	21:10,22	1:17 2:12
48:15 49:3	28:2,4,4	22:10,16,21	57:8
49:24 50:2	0	24:24 29:24	55
50:14,24	07	32:2,15	7:12
51:6 52:1	1:6 56:6	35:17 36:10	6
52:12,20	59:7	39:24 41:6	6
57:20,22	084-004670	41:21 43:9	3:4
58:1	1:24	43:11 44:20	60601-1014
words	1	45:5 48:18	59:2
22:6 46:12		48:19 51:19	60602
work	1	2008	2:6 59:6
7:24 8:3,22	10:23 11:4	1:16 56:14	60604
9:16,16,18	11:12 12:1	56:20 57:7	2:14
12:2 21:23	12:11 27:14	58:14 59:4	60639
21:24 22:5	29:3 39:3	59:8	7:10
22:7 30:5	52:24	21st	6403
31:15 42:7	100	48:19	1:6 56:6
42:16 49:6	23:5	24	59:7
49:20 50:6	15	1:16 56:14	662-1030
worked	9:6	57:7 59:8	2:15
9:5	17	27	
workers	3:13	3:14 59:4	7
12:24	180	2707	700
working	2:4 59:5	6:24	2:5 59:5
48:13			782-5808
World	2	3	2:7
8:22,23	2	300	
worth	28:24 29:3,4	59:1	9
44:15	2nd	31	9516
write	13:19 17:18	7:23	7:15
14:24 15:14	19:3,11	312	
written	20:9 21:4	2:7,15	
9:21 16:20	21:10,21	315	
wrong	22:10,16,21	1:18 2:13	
11:23 12:1	24:24 26:9	57:9	
30:17 33:22	27:1 29:24	34	
		7:23	